

March 10, 1954

William A. Jackson, Chairman
State Liquor Commission
Concord, New Hampshire

Dear Mr. Jackson:

You have inquired by letter of March 4, 1954 concerning the extent of your authority to hold to Regulation No. 15 as applied to televising commercials originating in New Hampshire. You are respectfully advised that it is my opinion that your Commission has no jurisdiction whatever to regulate advertising on television stations originating in New Hampshire, and a fortiori with respect to television broadcasts originating outside of the state.

Inasmuch as your request for this opinion of necessity refers to television broadcasts originating within this state, it obviously has reference to the only television station prospectively to operate in New Hampshire, i.e., WJNH-TV. An examination of the primary coverage area of this station (Channel 9) indicates that it will service parts of at least four states in the New England area. Furthermore, it is believed that its license from the Federal Communications Commission specifies this interstate coverage and it is not believed possible to so control the beam as to confine the operation of this station so as to achieve a solely intrastate radius even if this were felt to be desirable.

The Third Circuit Court of Appeals on September 5, 1950, in Allen B. DuMont Laboratories v. Carroll, 184 F. 2d 153 held that:

"... The Communications Act of 1934 applies to every phase of television and it is clear that Congress intended the regulatory scheme set out by it therein to be exclusive of State action. . . ."

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In referring to an attempt of the Pennsylvania State Board of Censors to require submission of all motion picture films intended to be broadcast by television in Pennsylvania to that Board for censorship purposes, the Court said:

" . . . the sovereignty of the Commonwealth of Pennsylvania cannot be exercised to censor motion picture films employed in television broadcasting because the broadcasting of films by television does not lie within the dominion of the Commonwealth. We cannot agree with the contention of the Board of Censors that censorship by the States is permitted under the Act. . . ."

So that there may be no doubt as to the full scope of the Court's decision, it was further held, at page 156:

" . . . program control was entrusted to the Federal Commission and it is an effective one. . . . We think it is clear that Congress has occupied fully the field of television regulation and that that field is no longer open to the States. Congress possessed the constitutional authority to effect this result. . . ."

The United States Supreme Court denied a petition for certiorari in this case (340 U.S. 929, 95 L. Ed. 670, 71 S. Ct. 490).

Nothing in this opinion is intended directly or indirectly to refer to the right and/or power of your Commission to control radio advertising originating in New Hampshire.

Sincerely,

Louis C. Wyman
Attorney General

w/a